

## § 1.134

## 37 CFR Ch. I (7–1–08 Edition)

pending before the Office must be conducted on Office premises and within Office hours, as the respective examiners may designate. Interviews will not be permitted at any other time or place without the authority of the Director.

(2) An interview for the discussion of the patentability of a pending application will not occur before the first Office action, unless the application is a continuing or substitute application or the examiner determines that such an interview would advance prosecution of the application.

(3) The examiner may require that an interview be scheduled in advance.

(b) In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office actions as specified in §§ 1.111 and 1.135.

(35 U.S.C. 132)

[24 FR 10332, Dec. 22, 1959, as amended at 62 FR 53194, Oct. 10, 1997; 65 FR 54674, Sept. 8, 2000; 70 FR 56128, Sept. 26, 2005]

### TIME FOR REPLY BY APPLICANT; ABANDONMENT OF APPLICATION

AUTHORITY: Secs. 1.135 to 1.138 also issued under 35 U.S.C. 133.

### § 1.134 Time period for reply to an Office action.

An Office action will notify the applicant of any non-statutory or shortened statutory time period set for reply to an Office action. Unless the applicant is notified in writing that a reply is required in less than six months, a maximum period of six months is allowed.

[62 FR 53194, Oct. 10, 1997]

### § 1.135 Abandonment for failure to reply within time period.

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must in-

clude such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

(c) When reply by the applicant is a *bona fide* attempt to advance the application to final action, and is substantially a complete reply to the non-final Office action, but consideration of some matter or compliance with some requirement has been inadvertently omitted, applicant may be given a new time period for reply under § 1.134 to supply the omission.

[62 FR 53194, Oct. 10, 1997]

### § 1.136 Extensions of time.

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) are filed, unless:

(i) Applicant is notified otherwise in an Office action;

(ii) The reply is to a notice requiring compliance with § 1.75(b) or § 1.265;

(iii) The reply is a reply brief submitted pursuant to § 41.41 of this title;

(iv) The reply is a request for an oral hearing submitted pursuant to § 41.47(a) of this title;

(v) The reply is to a decision by the Board of Patent Appeals and Interferences pursuant to § 1.304 or to § 41.50 or § 41.52 of this title; or

(vi) The application is involved in a contested case (§ 41.101(a) of this title).

(2) The date on which the petition and the fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The expiration of the time period is determined by the amount of the fee paid. A reply must be filed prior to the expiration of the period of extension to avoid abandonment of the application (§ 1.135), but in no situation may an applicant reply later than the maximum time period set by statute, or be granted an extension of

time under paragraph (b) of this section when the provisions of this paragraph are available. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings, § 1.956 for extensions of time in *inter partes* reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3) of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences.

(3) A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

(b) When a reply cannot be filed within the time period set for such reply and the provisions of paragraph (a) of this section are not available, the period for reply will be extended only for sufficient cause and for a reasonable time specified. Any request for an extension of time under this paragraph must be filed on or before the day on which such reply is due, but the mere filing of such a request will not affect any extension under this paragraph. In no situation can any extension carry the date on which reply is due beyond the maximum time period set by statute. See § 1.304 for extensions of time to appeal to the U.S. Court of Appeals for the Federal Circuit or to commence a civil action; § 1.550(c) for extensions of time in *ex parte* reexamination proceedings; § 1.956 for extensions of time in *inter partes* reexamination proceedings; and §§ 41.4(a) and 41.121(a)(3)

of this title for extensions of time in contested cases before the Board of Patent Appeals and Interferences. Any request under this section must be accompanied by the petition fee set forth in § 1.17(g).

(c) If an applicant is notified in a “Notice of Allowability” that an application is otherwise in condition for allowance, the following time periods are not extendable if set in the “Notice of Allowability” or in an Office action having a mail date on or after the mail date of the “Notice of Allowability”:

(1) The period for submitting an oath or declaration in compliance with § 1.63;

(2) The period for submitting formal drawings set under § 1.85(c); and

(3) The period for making a deposit set under § 1.809(c).

[62 FR 53194, Oct. 10, 1997, as amended at 65 FR 54674, Sept. 8, 2000; 65 FR 76773, Dec. 7, 2000; 66 FR 21092, Apr. 27, 2001; 69 FR 50000, Aug. 12, 2004; 69 FR 56543, Sept. 21, 2004; 70 FR 3891, Jan. 27, 2005; 72 FR 46842, Aug. 21, 2007]

**§ 1.137 Revival of abandoned application, terminated or limited reexamination prosecution, or lapsed patent.**

(a) *Unavoidable*. If the delay in reply by applicant or patent owner was unavoidable, a petition may be filed pursuant to this paragraph to revive an abandoned application, a reexamination prosecution terminated under § 1.550(d) or § 1.957(b) or limited under § 1.957(c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(1);

(3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

(b) *Unintentional*. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph to revive an